IN THE

Supreme Court of the United States

October Term, 1973
No. 73-1645

J. MICHAEL DONAHUE, *et al.*,

Petitioners,

v.

BEECH AIRCRAFT CORPORATION,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR RESPONDENT IN OPPOSITION.

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BRIEF FOR RESPONDENT IN OPPOSITION.

Opinions Below.

The opinions below are adequately set forth in Appendix A through Appendix D of the Petition. The opinions below are not reported.

Jurisdiction.

Petitioners seek to invoke the jurisdiction of this Court pursuant to 28 U.S.C. § 1254(1).

Question Presented.

Is the $10,000 amount in controversy requirement of 28 U.S.C. § 1332(a) met in the instant controversy?

Statute Involved.

United States Code, Title 28:

§ 1332. Diversity of citizenship; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, . . .

Statement of the Case.

On June 7, 1971 a Complaint entitled "Complaint for Fraud and Deceit (A Class Action)" was filed in the Superior Court of the State of California by Fletcher Jones, on behalf of himself and all persons who have purchased and/or own or operate a Beech Bonanza, Debonair, Travel Air or Baron aircraft having installed therein forty-gallon fuel cells. [Clk. Tr., pp. 6-10.]

The Complaint alleged that respondent Beech Aircraft Corporation ("Beech") affirmatively misrepresented to the members of the alleged class that its Bonanza, Debonair, Travel Air and Baron models of aircraft incorporating unbaffled forty-gallon fuel cells systems were airworthy and concealed from the Federal Aviation Administration ("FAA") and the public generally, certain alleged deficiencies in the fuel system.[1] Compensatory damages claimed to be equal to the cost of replacing components of the fuel system were sought on behalf of the named plaintiff and the members of the purported class. In addition, punitive damages in the

[1]While proof on the merits is not the issue in this proceeding, Beech wishes to advise this Court that its aircraft are airworthy and safe, and that it has abundant proof that there was no concealment or misrepresentation, whether to the FAA or to anyone else.

sum of $100,000.000 were sought on behalf of the alleged class. [Clk. Tr., pp. 6-10.]

On July 2, 1971 Beech filed a verified Petition and a Bond for Removal pursuant to 28 U.S.C. § 1441 *et seq.*, and thereby removed this case to the United States District Court for the Central District of California [Clk. Tr., pp. 1-13], where it was assigned to District Judge Malcom M. Lucas. Beech's Petition alleged diversity of citizenship and an amount in controversy in excess of $10,000. [Clk. Tr., p. 2.]

On July 15, 1971 Beech filed its answer to plaintiff's complaint denying the material allegations thereof. [Clk. Tr., pp. 14-21.] Thereafter, the plaintiff pursued discovery from Beech. Plaintiff's discovery included five separate sets of interrogatories [Clk. Tr., pp. 26, 154, 169, 268, 352], several depositions and three requests for production of documents. [Clk. Tr., pp. 148, 411, 860.]

On September 1, 1972, fifteen months after the action was commenced, Beech moved the District Court for an order determining that the action could not be maintained as a class action and for an order requiring the plaintiff to file an amended complaint striking all allegations as to representation of absent parties. [Clk. Tr., pp. 907-908.] On September 14, 1972 plaintiff moved the Court for an order continuing the hearing on Beech's motion. [Clk. Tr., p. 937.] On September 18, 1972 the Court continued the date for hearing on Beech's motion to Monday, November 11, 1972.

On November 7, 1972 plaintiff Fletcher Jones met his death by accidental means and, thereafter, on November 15, 1972, pursuant to stipulation of the parties, the Court ordered all motions off calendar. [Clk.

Tr., p. 1298.] This temporary stay of proceedings was ordered to allow the parties time to consider the effect of plaintiff Jones' death on the status of the case. Thereafter, on December 11, 1972, at an in-chambers and unreported status conference, Judge Lucas granted the attorney representing the deceased plaintiff Jones and the alleged class permission to file an amended complaint substituting other parties in the place and stead of decedent Jones. Judge Lucas ordered that the hearing on defendant's motion be set for Monday, January 22, 1973.

Less than four weeks later, on January 5, 1973, attorneys for the deceased plaintiff Fletcher Jones filed an amended complaint[2] on behalf of petitioners herein, J. Michael Donahoe and Nelson J. MacLeod.

The amended complaint in substance alleged a class composed of all persons who on June 7, 1971 owned a Beech Bonanza, Debonair, Baron or Travel Air aircraft having installed therein 40-gallon unbaffled fuel cells.

The complaint further alleged "that jurisdiction herein is founded on diversity of citizenship between the parties *and the amount in controversy exceeds the sum of $10,000,* exclusively [sic] of any interest, costs and attorneys' fees" (Appendix AA, p. 1, emphasis supplied.)

In addition, the complaint alleged "that as a direct and proximate result of the defendant's conduct in the premises, plaintiffs and *each member of the class shall be entitled to recover punitive damages in the amount of $100,000,000* plus interest from the date of purchase

[2]The amended complaint is set out in full in Appendix AA, *infra.*

of each said aircraft embraced within the class" (Appendix AA, p. 6, emphasis supplied.)

On Monday, January 22, 1973 the Court heard argument on Beech's motion. On January 22, 1973 the District Court granted Beech's motion.

Thereafter, the District Court, on March 13, 1973, entered an order determining that this action might not proceed as a class action and further ordering petitioners to file an amended complaint deleting therefrom allegations as to representation of absent parties.[3] The District Court also made and entered Findings of Fact and conclusions of law on the motion[4] and entered an order certifying its order (denying petitioners the right to proceed with this action as a class action) for interlocutory appeal pursuant to 28 U.S.C. § 1292(b).

Petitioners thereafter petitioned the United States Court of Appeals for the Ninth Circuit for permission to file an interlocutory appeal, which petition was granted by the Ninth Circuit on April 5, 1973. Thereafter, an Appellants' Opening Brief was filed by the petitioners, which brief restricted itself to argument that the District Court improperly determined that this action was not appropriate for class adjudication. Beech then filed its Appellee's Brief arguing that the District Court properly determined that this matter was not appropriate for class adjudication.

On January 16, 1974 the matter was argued before Circuit Judges Merrill and Ely and District Judge Zirpoli sitting by designation. On February 6, 1974 the Ninth Circuit filed its opinion and judgment affirming

[3]The District Court's order of March 13, 1973 is set out in full in Appendix A of the Petition.

[4]The District Court's Findings of Fact and Conclusions of Law are set out in full in Appendix B of the Petition.

the District Court's order determining that this action is not appropriate for class adjudication and remanding the case to the District Court for further proceedings.[5]

Petitioners thereafter applied for a rehearing in the Ninth Circuit. Said application did not seek further review of the question of whether this action could properly be maintained as a class action, but instead raised for the first time their present contention that the federal courts at all times lacked subject matter jurisdiction in the within action. On March 25, 1974 the Ninth Circuit denied petitioners' application for rehearing.[6] This Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit followed.

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[5]The opinion and judgment of the United States Court of Appeals for the Ninth Circuit is set out in full in Appendix C of the Petition.

[6]The order of the United States Court of Appeals for the Ninth Circuit denying petitioners' application for rehearing is set out in full in Appendix D of the Petition.

ARGUMENT.

Petitioners' Petition ignores the fact that it is not the purpose and function of a writ of certiorari to give the defeated party in the Court of Appeals another hearing. As demonstrated below, this case is not an appropriate case for the granting of a writ of certiorari under the guidelines set forth in Rule 19 of the Supreme Court Rules. Moreover, the granting of the writ in this case would only serve to involve this Court in the resolution of what are essentially evidentiary questions.

I.

The Petition Should Be Denied on the Basis of Petitioners' Own Allegation of Federal Subject Matter Jurisdiction.

This action was filed on June 7, 1971 in the Superior Court of the State of California for the County of Orange. On July 2, 1971 it was removed by Beech to the United States District Court for the Central District of California. The grounds for removal stated in Beech's verified petition for removal were diversity of citizenship and an amount in controversy in excess of $10,000.

On July 15, 1971 Beech filed its answer to plaintiff's complaint. For the next 14 months plaintiff pursued discovery against Beech. Multiple sets of interrogatories, requiring thousands of separate responses and three requests for production of documents, which requested in total hundreds of pages of documents, were responded to by Beech. On September 1, 1972, 15 months after this action was filed, Beech moved the District Court for an order determining that this action was inappropriate for class adjudication.

While the motion was pending, the petitioners filed an amended complaint substituting themselves as plaintiffs of record. That complaint stated in clear and unequivocal language, *"jurisdiction herein is founded on diversity of citizenship between the parties and the amount in controversy exceeds the sum of $10,000 exclusively [sic] of any interest, costs and attorneys' fees"* (Appendix AA, p. 1, emphasis supplied).

Notwithstanding their clear and unequivocal allegation of federal subject matter jurisdiction, petitioners now raise, in this Court, a question as to the jurisdiction of the courts below. Regrettably they raise their objection after causing the District Court to consider almost 300 pages of points and authorities and supporting affidavits on Beech's class motion and after causing the Ninth Circuit to consider over 100 pages of briefs, to hear oral argument and to issue its opinion.

It is noteworthy that it was only after the Ninth Circuit had issued its opinion and judgment affirming the District Court's interlocutory determination that this is not a proper class action, that petitioners first disavowed their allegation that *"jurisdiction herein is founded on diversity of citizenship between the parties and the amount in controversy exceeds the sum of $10,000 exclusively [sic] of any interest, cost and attorney's fees"* (Appendix AA, p. 1, emphasis supplied).[7] Petitioners' purpose in doing so is obvious.

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[7]Petitioners weakly explain their delay by alleging that they did not learn of the alleged jurisdictional defects until "after the recent decision of *Zahn, supra* [*Zahn v. International Paper Co.*, ... U.S. ...., 38 L.Ed.2d 511 (1973)] was published (Petition, pp. 8-9)." However they argue that none of the alleged class members assert a claim in excess of $10,000 which, of course, brings the case under the rule enunciated by this Court in *Snyder v. Harris*, 394 U.S. 332 (1969). *Snyder* was decided two years before this case was filed and three years before petitioners filed their complaint alleging federal subject matter jurisdiction.

Petitioners wish an opportunity to reargue anew the question of the propriety of class adjudication of this case.

Petitioners, after utilizing many hours of the judicial time of an already strained federal judiciary on the basis of their own allegation of federal subject matter jurisdiction, now call upon the highest court of the nation to exercise its discretion to issue its writ. Under such circumstances, we submit, petitioners should be and are bound by their allegation of subject matter jurisdiction and the only proper action for this Court is to deny their Petition.

II.

The Petition Presents No Issue or Question of Such Public Interest as to Warrant the Exercise of This Court's Discretionary Jurisdiction.

The considerations which this Court utilizes in determining whether or not to exercise its discretionary jurisdiction are set forth in this Court's Rule 19(b). None of the considerations are applicable here and petitioners themselves do not urge that this case falls within the ambit of the rule.

A reading of the Petition makes it clear that the petitioners do not urge that the Ninth Circuit has rendered a decision in conflict with the decision of another circuit on the same matter, or that the Ninth Circuit had decided an important state or territorial question in a way in conflict with applicable state or territorial law. [Rule 19(b).]

The petitioners do not urge that the Ninth Circuit has decided an important question of federal law which has not yet been, but should be, settled by this Court, nor can they effectively argue that the Ninth Circuit

has decided a federal question in a way in conflict with applicable decisions of this Court.[8] Finally, the petitioners do not urge that the Ninth Circuit so far departed from the accepted and usual course of judicial proceedings or so far sanctioned such a departure by a lower court as to call for an exercise of this Court's power of supervision. [Rule 19(b).]

The arguments advanced by petitioners in favor of the exercise of this Court's discretionary jurisdiction are unpersuasive. Petitioners' argue that the "requirements of presenting a federal question under 28 U.S.C. § 1332, class action matters have been the subject of review on two recent decisions of this Court." (Petition, p. 7.) The Petition further notes that *Snyder v. Harris*, 394 U.S. 332 (1969), and *Zahn v. International Paper Co.*, ... U.S. ...., ... L.Ed.2d ...., 42 L.W. 4087 (1973), hold that the jurisdictional minimum of $10,000 in diversity matters cannot be attained by the *aggregation* of all class members' claims, present or not present." (Petition, pp. 7-8.)

In *Snyder, supra*, this Court held that the claims of potential class members cannot be aggregated to meet the jurisdictional minimum of $10,000 in diversity actions. Similarly, in *Zahn, supra*, this Court held that the mere fact that one of many class members may have a claim in excess of $10,000, does not of itself

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[8]Petitioners suggest that, under the rule of *Zahn, supra*, the federal courts lacked subject matter jurisdiction and that, therefore, the Ninth Circuit's opinion affirming the District Court's interlocutory order departed from the opinions of this Court. However, the Ninth Circuit's opinion was only directed to the issue of class adjudication which, of course, was the only matter certified for interlocutory appeal by the District Court. Moreover, no explanation is given in the Petition as to why the Ninth Circuit should not have accepted as true petitioners' own allegation of federal subject matter jurisdiction.

grant to the federal judiciary power to adjudicate matters as to those claimants possessing claims of less than $10,000.

Petitioners do not seek a review or reanalysis of these decisions. The petitioners instead seek to have this Court apply its holding in *Zahn, supra,* and *Snyder, supra,* to the facts of this case. Thus the Petition does not call upon this Court to resolve a conflict among the circuits or to decide an important question of federal law which has not yet been, but should be, settled by this Court, but rather to make a finding of fact as to whether or not a $10,000 claim exists as to each member of the purported class. Were this Court to undertake such a task it would conclude on the basis of the argument and evidence we set forth in Section III, *infra,* that the jurisdictional minimum is satisfied as to each member of the purported class. More important, however, is the fact that certiorari is not intended to resolve evidentiary and factual questions of this nature. This is especially true when the Petition seeks the issuance of this Court's writ to review subject matter jurisdiction in a case still pending in the District Court.

As a second and final argument in favor of certiorari in the instant action petitioners state "the prejudice to petitioners of being bound by a decision of the courts lacking in jurisdiction cannot be overstated." (Petition, pp. 11-12.) Petitioners argue that they did not originally file in the federal court, but were removed there on petition by Beech.

Petitioners then assert that once in federal court they were put to the burden of establishing the appropriateness of this purported class action under Rule 23 of the

Federal Rules of Civil Procedure. Petitioners then suggest they were somehow prejudiced by an alleged denial of the "benefit of the procedural rules of the State of California with respect to class actions embodied in California Code of Civil Procedure § 382 and as interpreted by decisions of that State." (Petition, p. 12.)

Petitioners cite this Court to *Daar v. Yellow Cab Co.*, 67 Cal.2d 695, 63 Cal.Rptr. 724, 433 P.2d 732 (1967), and *Vasquez v. Superior Court*, 4 Cal.3d 800, 94 Cal. Rptr. 796, 484 P.2d 964 (1971), apparently for the proposition that the procedural requirements for class adjudication under California law are different than the requirements of Rule 23. Petitioners then state: "Comparing this procedural test of California with that of Federal Rule 23, in particular Rule 23(b)(3), the differences become readily apparent. To be required to meet the muster of Rule 23 in a case properly in Federal Court is one thing. To be subject to its vigorous requirements when not properly in Federal Court is another matter altogether." (Petition, p. 13.)

Petitioners apparently suggest that prejudice exists when one is asked to meet the requirements of Rule 23 in a class action properly removed to federal court. Petitioners argue that had they been permitted to pursue their action in the California state courts, they could have tested the propriety of class adjudication under allegedly less rigorous standards than Rule 23. This argument runs on an erroneous presumption and the question presented is, at best, academic because the class action procedures of the federal rules are utilized by the California courts in determining the propriety of class adjudication. (See, *e.g.*, *LaSala v. American Savings & Loan Ass'n*, 5 Cal.3d 864, 97 Cal.Rptr. 849, 489 P.2d 1113 (1971); *Petherbridge v. Altadena*

Fed. Sav. & Loan Ass'n, 37 Cal.App.3d 193, 112 Cal. Rptr. 144 (1974).)

Accordingly, the criteria established by Rule 23 are exactly the same as those established by the California Supreme Court for the determination of the propriety of class adjudication. Since the California courts would apply the same criteria to this action as would the federal courts under Rule 23, no claim of prejudice can properly be asserted.

III.

The Federal Courts at All Times Had Subject Matter Jurisdiction Over the Instant Action.

It has always been the rule that both punitive and compensatory damages are to be considered in determining whether or not the requisite jurisdictional amount in controversy is present in a given action. (*Bell v. Preferred Life Assur. Soc.*, 320 U.S. 238 (1943).) In the instant action the jurisdictional minimum is satisfied as to each of the named and unnamed plaintiffs. Accordingly, the federal courts at all times had subject matter jurisdiction over the instant action.

Both the petition for removal and the amended complaint allege diversity of citizenship and an amount in controversy in excess of $10,000. The amended complaint alleges that Beech has manufactured "approximately" 15,000 planes of the model types petitioners allege have installed therein 40-gallon unbaffled fuel cells. The amended complaint alleges that the class is composed of all those owners of aircraft having installed therein 40-gallon fuel cells as of the date of the filing of the complaint (June 7, 1971). Thus, the total

population of the class can be no more than the total number of aircraft manufactured by Beech having installed therein 40-gallon unbaffled fuel cells.[9]

The record reflects that Beech has manufactured no more than 6,252 aircraft with 40-gallon unbaffled fuel cells. Accordingly, the allegation of 15,000 class plaintiffs is erroneous and the class can be composed of no more than 6,252 persons. The allegation of a right to $100,000,000 in punitive damages, if divided by the maximum 6,252 purported class members, reveals that each alleged class member's distributive share of said $100,000,000 is $15,993.28, an amount well in excess of the $10,000 jurisdictional minimum.[10]

For the convenience of the Court, we provide the following table which denotes the beginning and ending serial numbers of aircraft eligible for manufacture with optional 40-gallon unbaffled fuel cells. The information compiled herein is to be found in the record made in the District Court and designated on the interlocutory appeal to the Ninth Circuit.[11]

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[9]We say no more than the total number manufactured because manufacture of these aircraft commenced in 1960 (Petition, Appendix B, Finding 9) and it is therefore to be expected that many are no longer in service, that many are foreign owned, and that many, although eligible for optional 40-gallon fuel cells, were manufactured with fuel cells having a lesser capacity.

[10]To determine the amount claimed by each plaintiff, the amount of punitive damages claimed must be augmented by the amount of claimed compensatory damages. In some cases, the alleged compensatory damages are substantial as in the case of petitioner J. Michael Donahoe who claims $7,000 in loss of sales value for his aircraft, *see*, J. Michael Donahoe's Answers to Interrogatories propounded by Defendant Beech Aircraft Corporation.

[11]For evidence that the controversy only concerns aircraft with unbaffled fuel cells, see the affidavit of petitioners' affiant Gerald Sterns [Clk. Tr., p. 1136, lines 19-23]; for evidence of the beginning serial numbers presented herein, see Beech's Answers

Beginning Serialization	Ending Serialization	Net
Bonanza/Debonair Series		
CD388	CD1234	847
CE1	CE289	289
CJ1	CJ30	30
D6562	C9068	2,507
E1	E184	184
Baron/Travel Air Series		
TC1	TC1298	1,298
TD453	TD721	268
TE1	TE767	878
TF1	TF65	65
	TOTAL	6,252

This Court in *St. Paul Mercury Indemnity Co. v. Red Cal Co.*, 303 U.S. 283 (1938), held that where a suit is instituted in a state court and removed to a federal court, there is a strong presumption that plaintiff has not claimed a large amount for the purpose of conferring jurisdiction on the federal courts or that the parties have colluded to that end. Similarly, it has been held in this and other courts that the entire record may be referred to determine the existence or nonexistence of jurisdictional facts supporting federal jurisdiction, *e.g.*,

to Plaintiff's Interrogatories [Clk. Tr., pp. 417-419, lines 24-8]; for evidence of the ending serial numbers presented herein, see Federal Aviation Administration Airworthiness Directive, AD 72-11-2. [Clk. Tr. p. 1383.] The 15,000 aircraft figure found in the complaint is not totally irrational since Beech has, in total, manufactured 14,600 aircraft of the model types identified in the complaint. Of these 14,600 aircraft, 6,252 were eligible for 40-gallon unbaffled fuel cells, 906 were manufactured with 40-gallon baffled fuel cells, and 7,442 with 20 or 25-gallon fuel cells.

Boundurant v. Watson, 103 U.S. 281 (1881); *Ross v. Southern Ry. Co.*, 20 F.Supp. 556 (W.D.S.C. 1937).

The amended complaint herein pleads "that jurisdiction herein is founded on diversity of citizenship between the parties *and the amount in controversy exceeds the sum of $10,000. . . .*" The verified petition for removal filed by Beech pleads essentially the same facts. As we have demonstrated, the membership of the purported class can not exceed 6,252 persons; and, therefore, on the basis of the complaint, the petition for removal and on the facts, it is clear that the federal courts at all times had subject matter jurisdiction in this case. Accordingly, certiorari should be denied.

Conclusion.

This Court has stated that certiorari should not be granted except in cases involving principles, the settlement of which is of importance to the public, as distinguished from those of importance to the parties. *Rice v. Sioux City Memorial Park Cemetery*, 349 U.S. 70 (1955). It is clear that petitioners do not seek to invoke the jurisdiction of this Court to review principles "the settlement of which is of importance to the public" but rather to avoid the consequences of their very allegation that in the instant action "jurisdiction . . . is founded on diversity of citizenship and the amount in controversy exceeds the sum of $10,000 . . ." Moreover, the granting of a writ of certiorari in this case would only serve to involve the Court in what is essentially a fact finding task.

Accordingly, this Petition for Writ of Certiorari should be denied.

Dated: May 30, 1974.

Respectfully submitted,

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APPENDIX AA.

First Amended Complaint for Damages (Compensatory and Punitive).

United States District Court, Central District of California.

J. Michael Donahoe and Nelson J. MacLeod, Plaintiffs vs. Beech Aircraft Company, a corporation, Defendant. No. 71-1558-MML.

Filed January 5, 1973.

COMES NOW the plaintiffs J. MICHAEL DONAHOE and NELSON J. MacLEOD, in place of and instead of FLETCHER JONES now deceased, on their behalf and on behalf of all others similarly situated, having first obtained the permission of this Court, hereby files this First Amended Complaint for Damages and for cause of action against the defendant BEECH AIRCRAFT COMPANY, a corporation, complains and alleges as follows:

I

That at all times herein mentioned and at the time of the filing of this action the plaintiff J. MICHAEL DONAHOE was a resident and citizen of the State of Oklahoma and the plaintiff NELSON J. MacLEOD was a resident and citizen of the State of Maryland. That the defendant BEECH AIRCRAFT COMPANY was and now is a corporation organized and existing under and by virtue of the laws of Delaware, with a principal place of business in the City of Wichita, State of Kansas and was at all times mentioned doing business in the County of Los Angeles, State of California. That jurisdiction herein is founded on diversity of citizenship between the parties and the amount in

controversy exceeds the sum of $10,000.00 exclusively of any interest, costs and attorneys' fees.

II

That at all times mentioned in the original complaint on file herein entitled FLETCHER JONES v. BEECH AIRCRAFT COMPANY and at the time of filing of said complaint, plaintiff J. MICHAEL DONAHOE was the owner and operator of a 1967 Beechcraft Baron aircraft Model C-55 bearing Serial Number TE-263 and FAA Registration Mark N12MD. That plaintiff NELSON J. MacLEOD was and still is the owner of a 1968 Beechcraft Baron Model B-55 aircraft bearing Serial Number TC-1059 and FAA Registration Mark N7130N. That each of said aircraft bore current Airworthiness Certificates signed by or on behalf of Chester A. Rembleske as authorized managing agent of the defendant BEECH AIRCRAFT COMPANY.

III

That each of the above mentioned aircraft was manufactured by the defendant and incorporating therein at the time of manufacture main fuel cells of 40 gallon capacities. That said 40 gallon fuel cells are common to other aircraft manufactured by the defendant, to wit, the Beechcraft Debonair series, the Beechcraft Bonanza series, the Beechcraft Baron series and the Beechcraft Travelair series aircraft.

IV

Defendants have designed, assembled, manufactured, sold and distributed approximately 9000 Bonanzas and Debonairs and approximately 6000 Barons and Tavelairs which incorporate and utilize the 40 gallon fuel

system hereinabove referred to; said 40 gallon fuel system was and is defective in its design and construction in that under normal operating procedures fuel within the 40 gallon fuel cells, during operation, is caused to move in a spanwise direction uncovering the fuel strainer port within the tank permitting air to enter the fuel system and thus causing an interruption in the operation of the engine and a loss of power to the aircraft. That said defect is identical and common to all of the above described aircraft, including those aircraft owned and operated by plaintiffs herein.

V

Plaintiffs bring this action in place and in stead of FLETCHER JONES who is now deceased. Said action is brought on plaintiffs' behalf and all others similarly situated who owned the above described aircraft at the time of the filing of the initial complaint herein. Plaintiffs herein, by way of this amended complaint, seek to recover damages occasioned by the above described defects, which claim involves common questions of fact and law of interest to many persons residing and using said aircraft throughout the United States and in foreign countries. That the questions of fact and law involved in plaintiffs' claim are typical and common to the entire class. That because of the large numbers of persons involved and because of their location throughout the United States and the world it is impractical to bring all of said persons who are properly members of the class before this honorable court and plaintiffs therefore bring this action not only on their own behalf but also for the benefit of all persons similarly situated. That said plaintiffs can fairly and adequately represent the members of the class.

VI

Prior to the production of each of the BEECH AIRCRAFT COMPANY'S Bonanzas, Debonairs, Barons and Travelairs incorporating and utilizing the aforesaid 40 gallon fuel system, the defendant acting through its authorized representatives, including particularly defendant's employee Chester Rembleske, submitted to the Federal Aviation Administration (then "Agency") of the United States of America, false, misleading and incomplete information in the form of a "Statement of Compliance" that each of said aircraft, including their respective fuel systems, had been tested by the defendant as provided and required by law and were found to comply with the applicable Federal Statutes and Regulations pursuant to which each of said aircraft were type certificated. On the basis of the information thus provided and the information thus not provided, the Federal Aviation Administration issued a type certificate to defendant for each of the model aircraft hereinabove described and a production certificate for the production of each model of said aircraft; had the Federal Aviation Administration been advised as to the defects in said aircraft, all of which were known to defendant, the type certificates and production certificates, thus issued, would not have been issued and could not have been issued as a matter of law.

VII

After obtaining type certification and production certificates on each of the above described aircraft, defendant BEECH AIRCRAFT COMPANY commenced manufacture of said aircraft and equipped each with a 40 gallon fuel system which defendant knew

did not meet the minimum standards under which the type certificate was issued and defendant knew said aircraft were not airworthy as a result; said aircraft were ultimately sold to plaintiffs and to the members class of persons similarly situated with plaintiffs, all of whom relied upon and were justified in relying upon the false and fraudulent representations of defendant that said aircraft, including their respective fuel systems, were airworthy. Plaintiffs and all members of the class further relied on the airworthiness certificate accompanying each and every such aircraft, which certificate was signed by Chester Rembleske for defendant BEECH AIRCRAFT COMPANY and said airworthiness certificate represented the aircraft, including its fuel system, was in fact airworthy; at the time each airworthiness certificate for each aircraft was signed, Chester Rembleske and the members of the Board of Directors of defendant BEECH AIRCRAFT COMPANY, actually knew that said fuel system was defective in its design and construction and that the representations theretofore made with regard to said aircraft and said system and contained and set forth in said airworthiness certificate were false.

VIII

That in addition to the acts described hereinabove, the defendant concealed the existence of said defects from the plaintiffs herein and all members of the class, failed to adequately test and determine the full nature and extent of the fuel starvation problem in said 40 gallon fuel system and wilfully and wantonly failed to modify, repair, alter or change said fuel system in said aircraft.

IX

That the conduct of the defendant was wilful, wanton, grossly negligent, malicious, fraudulent and deceitful as to plaintiffs herein and as to all members of the class as above described. That said wrongful conduct of the defendant entitles plaintiffs herein and all members of the class to punitive damages as against the defendant under the law of whatever jurisdiction this court determines applicable to the wrongful conduct of the defendant, all as more particularly sought hereinbelow.

X

Plaintiffs herein discovered the wrongful conduct of the defendant within a few days following the filing of the class action of FLETCHER JONES when they read in the Wall Street Journal and other national publications of the filing of said action. That up to that time said plaintiffs and members of the class were unaware of the nature and extent of the defects in their aircraft nor were they aware of the wrongful conduct of the defendant herein.

XI

That as a direct and proximate result of the defendant's conduct in the premises, it is necessary for plaintiffs herein to modify and repair the fuel cells contained in their aircraft in order that the fuel system be made airworthy and such modifications and repairs will cost in excess of $800.00. Likewise, it is necessary that each and every member of the class of persons similarly situated, each of whom is required to similarly modify their aircraft, incur the cost of repairs and modifications in an amount in excess of $800.00 per

aircraft. Plaintiffs are informed and believe and therefore allege the actual damages thus sustained by the total membership of the class are in excess of 8.4 million dollars.

XII

That as a direct and proximate result of the defendant's conduct in the premises, plaintiffs and each member of the class shall be entitled to recover punitive damages in the amount of 100 million dollars, plus interest from the date of the purchase of each of said aircraft embraced within the class.

WHEREFORE, plaintiffs pray for judgment against the defendant as follows:

1. For reimbursement to plaintiffs and to each member of the class the sum of $800.00 or such other amount as may be necessary to repair and modify each aircraft,
2. For punitive damages in the amount of 100 million dollars,
3. For costs of suit incurred herein, and
4. For such other and further relief as the Court deems just and proper.

DATED: January 3, 1973

MAGANA & CATHCART and
WALKUP, DOWNING, STERNS & POORE
By: /s/ Daniel C. Cathcart
DANIEL C. CATHCART
Attorneys for Plaintiffs